

## Securities and Exchange Commission

## § 204.65

(6) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(7) Any assignment or allotment by the employee of the employee's earnings shall be void to the extent it interferes with or prohibits execution of the withholding order under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(8) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the Commission to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

(f) *Exclusions from garnishment.* The Commission will not garnish the wages of a debtor it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing the Commission of the circumstances surrounding an involuntary separation from employment.

(g) *Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the Commission of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(2) A debtor requesting a review under this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation.

(3) If a financial hardship is found, the Commission will downwardly adjust, by an amount and for a period of time agreeable to the Commission, the amount garnished to reflect the debtor's financial condition. The Commission will notify the employer of any adjustments to the amounts to be withheld.

(h) *Ending garnishment.* (2) Once the Commission has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative

costs consistent with the Federal Claims Collection Standards (31 CFR 901.9), the Commission will send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, the Commission will review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(i) *Actions prohibited by the employer.* The Debt Collection Act prohibits an employer from discharging, refusing to employ, or taking disciplinary action against the debtor due to the issuance of a withholding order under this section (31 U.S.C. 3720D(e)).

(j) *Refunds.* (1) If a hearing official determines that a debt is not legally due and owing to the United States, the Commission shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(k) *Right of action.* The Commission may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with this section. However, a suit will not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations. For purposes of this section, "termination of the collection action" occurs when the agency has terminated collection action in accordance with the Federal Claims Collection Standards (31 CFR 903.1-903.5) or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the Commission has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

### Subpart E—Miscellaneous: Credit Bureau Reporting, Collection Services

AUTHORITY: 31 U.S.C. 3701, 3711, 3718.

SOURCE: 58 FR 64373, Dec. 7, 1993, unless otherwise noted.

## § 204.75

### § 204.75 Collection services.

Section 13 of the Debt Collection Act (31 U.S.C. 3718) authorizes agencies to enter into contracts for collection services to recover debts owed the United States. The Act requires that certain provisions be contained in such contracts, including:

(a) The agency retains the authority to resolve a dispute, including the authority to terminate a collection action or refer the matter to the Attorney General for civil remedies; and

(b) The contractor is subject to the Privacy Act of 1974, as it applies to private contractors, as well as subject to State and Federal laws governing debt collection practices.

### § 204.76 Use of credit bureau or consumer reporting agencies.

(a) The Commission may report delinquent debts to consumer reporting agencies (See 31 U.S.C. 3701(a)(3), 3711). Sixty days prior to release of information to a consumer reporting agency, the debtor shall be notified, in writing, of the intent to disclose the existence of the debt to a consumer reporting agency. Such notice of intent may be a separate correspondence or included in correspondence demanding direct payment. The notice shall be in conformance with 31 U.S.C. 3711(e) and the Federal Claims Collection Standards. The Commission shall provide, in this notice, the debtor with:

(1) An opportunity to inspect and copy agency records pertaining to the debt;

(2) An opportunity for an administrative review of the legal enforceability or past due status of the debt;

(3) An opportunity to enter into a repayment agreement on terms satisfactory to the Commission to prevent the Commission from reporting the debt as overdue to consumer reporting agencies, and provide deadlines and method for requesting this relief;

(4) An explanation of the rate of interest that will accrue on the debt, that all costs incurred to collect the debt will be charged to the debtor, the authority for assessing these costs, and the manner in which the Commission will calculate the amount of these cost;

(5) An explanation that the Commission will report the debt to the con-

## 17 CFR Ch. II (4-1-02 Edition)

sumer reporting agencies to the detriment of the debtor's credit rating; and

(6) A description of the collection actions that the agency may take in the future if those presently proposed actions do not result in repayment of the loan obligation, including the filing of a lawsuit against the borrower by the agency and assignment of the debt for collection by offset against Federal income tax refunds or the filing of a lawsuit against the debtor by the Federal Government.

(b) The information that may be disclosed to the consumer reporting agency is limited to:

(1) The debtor's name, address, social security number or taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the claim; and

(3) The Commission program or activity under which the claim arose.

[58 FR 64373, Dec. 7, 1993, as amended at 66 FR 54135, Oct. 26, 2001]

### § 204.77 Referrals to collection agencies.

(a) The Commission has authority to contract for collection services to recover delinquent debts in accordance with 31 U.S.C. 3718(a) and the Federal Claims Collection Standards (31 CFR 901.5).

(b) The Commission will use private collection agencies where it determines that their use is in the best interest of the Government. Where the Commission determines that there is a need to contract for collection services, the contract will provide that:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, or refer the matter to the Department of Justice for litigation or to take any other action under this part will be retained by the Commission;

(2) Contractors are subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m) and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;